

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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:  
**EQUAL EMPLOYMENT OPPORTUNITY** :  
**COMMISSION,** :

**Plaintiff** :

**v.** :

**NICHOLS GAS & OIL, INC.** :

**Defendant.** :  
:  
-----X

**Civil Action No.**

**COMPLAINT**  
**JURY TRIAL DEMAND**

**NATURE OF THE ACTION**

This is an action under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex, female, retaliation and/or constructive discharge, and to make whole Eliza Foss ("Foss") and other similarly situated individuals ("claimants"). These allegations are described in greater detail in paragraph seven (7) below.

**JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) and Section 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and § 2000e-6 ("Title VII"), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The unlawful employment practices alleged below were committed within the jurisdiction of the United States District Court for the Western District of New York.

**PARTIES**

3. Plaintiff, Equal Employment Opportunity Commission (hereinafter “EEOC” or “the Commission”), is an agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII and is expressly authorized to bring this action by Sections 706(f)(1) and (3) and Section 707 of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and § 2000e-6.

4. Defendant has continuously been a New York corporation doing business in the State of New York and has had at least fifteen employees during the relevant time period.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g), and (h) of Title VII, 42 U.S.C. §§ 2000e-(b),(g), and (h).

### **STATEMENT OF CLAIMS**

6. More than thirty days prior to the institution of this lawsuit, Eliza Foss filed a Charge of Discrimination with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least January 1999, Defendant, through its owner and some of its male employees, has engaged in unlawful employment practices in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e. These practices include, but are not limited to, the following:

- (a) Defendant subjected claimants to frequent and pervasive sexual harassment, including unwelcome groping of female employees’ bodies, including their breasts and buttocks.
- (b) Defendant also subjected claimants to on-going sexually explicit propositions and comments including, but not limited to: “suck my cock

so I can go home with lipstick on the end of it and make my wife jealous,”  
“I could come over and fuck your brains out” and requests for  
“blow- jobs.” Defendant also permitted an environment where female  
employees were referred to as, “whore” and “stupid bitch” and  
references were made about their bodies, using language such as “ass” and  
“tits.”

- (c) Although claimants protested and complained about the harassment Defendant made no efforts to prevent or eradicate this continuing egregious and offensive behavior.
- (d) Defendant caused the constructive discharge of claimants due to the on-going severe and pervasive sexual harassment.
- (e) Defendant retaliated against claimants who complained of sexual harassment or who refused to participate in the sexualized work atmosphere by further harassing them, terminating them and/or taking other adverse action against them.

8. The effect of the practices complained of above has been to deprive claimants of equal employment opportunities and otherwise adversely affect their status as employees because of their sex.

9. The unlawful employment practices complained of above were intentional.

10. At all relevant times, Defendant has acted with malice or reckless indifference to the federally protected rights of claimants.

**PRAYER FOR RELIEF**

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practices that discriminate on the basis of sex;

B. Order Defendant to institute and carry out policies, practices and programs that provide equal employment opportunities for all employees, regardless of sex, and that eradicate the effects of Defendant' past and present unlawful employment practices;

C. Order Defendant to make whole all those individuals affected by the unlawful employment practices described above, by providing compensation for past and future pecuniary losses in amounts to be determined at trial;

D. Order Defendant to make whole all those individuals affected by the unlawful employment practices described above, by providing compensation for non-pecuniary losses, including pain, suffering and humiliation, in amounts to be determined at trial;

E. Order Defendant to provide punitive damages for its malicious and/or reckless conduct, in amounts to be determined at trial;

F. Grant such further relief as the Court deems necessary and proper;

G. Award the Commission its costs in this action.

### **JURY TRIAL DEMAND**

The Commission requests a jury trial on all questions of fact raised by its Complaint.

Dated: New York, New York  
September 13, 2005

Respectfully submitted,

James L. Lee  
Deputy General Counsel

Gwendolyn Young Reams  
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
1801 L Street, N.W.  
Washington, D.C. 20507

s/ Elizabeth Grossman  
Elizabeth Grossman  
Acting Regional Attorney

s/Nora E. Curtin  
Nora E. Curtin  
Acting Supervisory Trial Attorney

s/Sunu P. Chandy  
Sunu P. Chandy  
Senior Trial Attorney  
New York District Office  
33 Whitehall Street, 5<sup>th</sup> Floor  
New York, New York 10004  
Phone: 212-336-3706  
Fax: 212-336-3623